Supreme Court, U.S.
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No. 99-62

In The

Supreme Court of the United States

SANTA FE INDEPENDENT SCHOOL DISTRICT,

Petitioner,

vs.

JANE DOE, Individually and as next friend for her minor children, Jane and John Doe, Minor Children; Jane Doe #2, Individually and as next friend for her minor child, John Doe, Minor Child, and John Doe, Individually,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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REASONS FOR GRANTING THE PETITION

I. After the filing of the Petition in this case, the Eleventh Circuit issued a new decision that squarely conflicts with the decision of the Fifth Circuit. This Court should grant the Petition to resolve this circuit court split.

On July 13, 1999, the court of appeals for the Eleventh Circuit upheld a school district's practice of permitting student-initiated prayer at graduation, sporting events, and other school functions. *Chandler v. James*, Nos. 97-6898, 97-6953, 1999 WL 493495, *2-3 (11th Cir., July 13, 1999). In contrast to the Fifth Circuit's decision in *Santa Fe*, the *Chandler* court held that neutral accommodation of student religious speech at school functions is not only permissible, it is *required* by both the Free Exercise and the Free Speech Clauses of the Constitution. *Id.* at *5-6. The law of the Eleventh Circuit now directly conflicts with that of the Fifth Circuit on these important issues of constitutional law.

In *Chandler*, the district court had enjoined school officials from "permitting . . . students to pray or to deliver religious or devotional messages . . . over any public-address system during the instructional day (including the home room period) or in connection with any school-sponsored event," including graduation and sporting events. *Chandler v. James*, 985 F.Supp. 1062, 1064 (M.D. Ala. 1997), *rev'd in part*, Nos. 97-6898, 97-6953, 1999 WL 493495 (11th Cir., July 13, 1999). The same injunction required school officials to discipline students who engage in "enjoined activity." *Id.* The Eleventh Circuit held that the injunction unconstitutionally banned

private, constitutionally-protected religious speech. 1999 WL 493495, at *3.

The *Chandler* court reasoned that, when a school district permits secular speech at student functions, the "discriminatory suppression of student-initiated religious speech demonstrates not neutrality but hostility toward religion." *Id.* at *6. Such an implied disapproval of religion (and its corollary approval of non-religion) offends the neutrality principles developed by the Supreme Court, the court said. *Id.* at *5-6. Moreover, censoring religious content from speech constitutes viewpoint discrimination, "the most egregious form of content-based censorship" prohibited by the Free Speech Clause. *Id.* at *9.

Like the dissent in *Santa Fe*, the Eleventh Circuit agreed that the neutral accommodation of religious student speech does not offend the Establishment Clause and "does not automatically constitute an unconstitutional State endorsement of religion." *Id.* at *6.

> Permitting students to speak religiously signifies neither state approval nor disapproval of that speech. The speech is not the State's – either by attribution or adoption. The permission signifies no more than that the State acknowledges its constitutional duty to tolerate religious expression. . . . Religious speech by students does not become forbidden 'state action' the moment the students walk through the schoolhouse door.

Id.

The *Chandler* court similarly concluded that student religious speech does not violate the coercion test of *Lee v. Weisman*, 505 U.S. 577 (1992), because the state itself is not directing the religious speech. Moreover, coercion does not occur merely because a person is subjected to speech that he finds offensive, the court concluded. One result of the freedoms guaranteed in our Constitution is that citizens, at times, must hear messages, both religious and non-religious, that they would rather not hear. *Id.* at *7-8.

As a result of the *Santa Fe* and *Chandler* decisions, speech that is protected in Florida, Alabama, and Georgia is forbidden in Texas, Louisiana, and Mississippi. This is a constitutionally unsupportable result. Given the conflict between these two circuits and the continuing public interest in this issue throughout the nation, further litigation is inevitable. This Court should grant the Petition to resolve this conflict and to bring clarity to this area of the law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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